

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

UNITED STATES OF AMERICA,
Plaintiff,
- against -
DANIEL HERNANDEZ, et al.,
Defendants.

: Docket #18cr834
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: New York, New York
November 19, 2018
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PROCEEDINGS BEFORE
THE HONORABLE HENRY PITMAN,
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

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<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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None

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THE CLERK: U.S. v. Daniel Hernandez. Counsel,
please state your name for the record.

MR. MICHAEL LONGYEAR: Good evening, Your
Honor, Michael Longyear and Jacob Warren on behalf of the
United States.

MR. LANCE LAZZARO: Lance Lazzaro for Daniel
Hernandez.

MS. DAWN FLORIO: Good evening, Your Honor,
Dawn Florio of the Dawn Florio Law Firm representing Mr.
Daniel Hernandez.

THE COURT: Mr. Hernandez, my name is
Magistrate Judge Pitman. The purpose of this proceeding
is to inform you of certain rights that you have, to
inform you of the charges against you, to consider whether
counsel should be appointed for you, and to decide under
which conditions if any you should be released. Can I
have the date and time of arrest please?

MR. LONGYEAR: Yes, Your Honor, the defendant
was arrested last night, November 18, at approximately 7
p.m.

THE COURT: Thank you. Mr. Hernandez, you have
the right to remain silent. You're not required to make
any statements. Even if you have made any statements to
the authorities, you need not make any further statements.

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2 Anything that you do say can be used against you.

3 You have the right to be released either
4 conditionally or unconditionally pending trial unless I
5 find that there are no conditions or combination of
6 conditions that would reasonably assure your presence in
7 court and the safety of the community.

8 You have the right to be represented by counsel
9 during all court proceedings including this one and during
10 all questioning by the authorities. If you cannot afford
11 an attorney, I will appoint one to represent you. It's my
12 understanding that you're currently being represented by
13 privately retained counsel. I want to advise you that the
14 right to the appointment of counsel is an ongoing right
15 that you possess throughout these proceedings. If at any
16 time you're unable to continue with retained counsel
17 because you run out of money, you can apply to the court
18 at any time for the appointment of counsel. Do you
19 understand that?

20 MR. DANIEL HERNANDEZ: Yes, Your Honor.

21 THE COURT: Mr. Hernandez, you're charged in an
22 indictment in six counts. Count 1 of the indictment
23 charges you with conspiring or agreeing with others to
24 violate the racketeering laws of the United States in
25 violation of Title 18 U.S.C. § 1962(d). Count 2 of the

1
2 indictment charges you with carrying a firearm in
3 furtherance of a crime of violence that can be prosecuted
4 in federal court in violation of Title 18 U.S.C. § 924(c).
5 Count 3 charges you with committing a crime of violence in
6 aid of racketeering activity, namely, robbery that's
7 alleged to have occurred on April 3, 2018 in violation of
8 Title 18 U.S.C. § 1959.

9 Count 4 charges you with conspiring to commit a
10 crime, namely, assault with a dangerous weapon also in aid
11 of racketeering activity in violation of Title 18 U.S.C. §
12 1959. Count 5 charges you with carrying a firearm in
13 furtherance of a crime of violence that can be prosecuted
14 in federal court in violation of Title 18 U.S.C. § 924(c).
15 And count 8 charges you with committing a crime of
16 violence in aid of racketeering activity, namely,
17 allegedly participating in a conspiracy to commit murder
18 in July of this year in violation of Title 18 U.S.C. §
19 1956.

20 Mr. Lazzaro, have you received a copy of the
21 indictment?

22 MR. LAZZARO: I have, Your Honor.

23 THE COURT: Have you reviewed it with your
24 client and do you waive its reading?

25 MR. LAZZARO: So waived.

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THE COURT: Okay. Since the defendant has been indicted, there will be no preliminary hearing, and that takes us directly to the question of bail. In that regard, I have received a letter earlier this afternoon from the Government addressing bail and seeking detention. Mr. Lazzaro, I take it you've gotten that same letter, it has three exhibits?

MR. LAZZARO: I have not seen it at all, Judge.

THE COURT: Do you have a copy for defense counsel?

MR. LONGYEAR: I do, Your Honor.

THE COURT: All right.

(pause in proceeding)

THE COURT: Take some time to review it.

(pause in proceeding)

MR. LAZZARO: We're ready to proceed, Your Honor.

THE COURT: Mr. Longyear, when did you learn that Mr. Lazzaro or Ms. Florio were going to be representing Mr. Hernandez?

MR. LONGYEAR: Your Honor --

THE COURT: What time today did you learn that they were going to be representing Mr. Hernandez?

MR. LONGYEAR: We knew that Mr. Lazzaro

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2 represented the defendant prior to today, Your Honor. We
3 emailed a copy of this letter as it was, prior to being
4 hand-delivered to Your Honor.

5 THE COURT: All right, I'll hear from the
6 Government first on detention. Then I'll hear from
7 defense counsel.

8 MR. LONGYEAR: Yes, thank you, Your Honor.
9 With respect to detention, Your Honor, the defendant
10 should be detained for both risk of flight and danger to
11 the community. I will address risk of flight first as set
12 forth in the letter from earlier today.

13 The defendant is a famous rap artist, Your
14 Honor, and has substantial means. Indeed, the defendant
15 frequently posts on social media accounts large sums of
16 cash, throws it around, he makes it clear that he makes a
17 lot of money. We've seen financial records, Your Honor,
18 that shows the defendant regularly makes large cash
19 withdrawals, tens of thousands of dollars, in some
20 instances over \$100,000 in cash in single withdrawals.
21 And that is important here because the indictment charges
22 the defendant with several violent crimes, and the
23 mandatory minimum here, Your Honor, is 32 years to be
24 served consecutively to any other sentence.

25 So there is, indeed, a significant incentive to

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2 flee in this case, Your Honor, and the defendant has the
3 financial means to do it, and, indeed, the Pretrial
4 report, Your Honor, the probation department recommends
5 detention here, listing several factors with respect to
6 non-appearance including foreign familial ties, his
7 extensive foreign travel, and the means that he has, the
8 financial means, Your Honor.

9 Turning to danger to the community, Your Honor,
10 the letter details some of the facts underlying the
11 charges here in the indictment. Several shootings and
12 other violent crimes beginning in or about April 3, Your
13 Honor, there was a gunpoint robbery of a rival gang member
14 in Manhattan, in Times Square. This was done at around 5
15 p.m., Your Honor, still daylight. Mr. Hernandez and his
16 codefendants, certain of his codefendants traveled from
17 Brooklyn to Manhattan and engaged in a gunpoint robbery of
18 the victims.

19 That robbery was captured on surveillance video.
20 The video shows one of the codefendants holding a gun.
21 And it's the Government's contention that Mr. Hernandez
22 was in the car parked outside of that robbery filming it
23 as it took place. The Government would also submit that
24 witness testimony would show at trial that Mr. Hernandez
25 played a role in planning and directing that robbery, Your

1
2 Honor.

3 Turning to April 21, 2018, there were two
4 shootings that took place within hours of each other. As
5 detailed in the letter, during the day the defendant was
6 with one of his codefendants in Brooklyn and a third
7 person. They were shopping for clothes, they were at a
8 restaurant. They got into a verbal altercation with two
9 individuals who were in a car, and shortly after that
10 verbal altercation, one of the codefendants got out of
11 their car, approached the other vehicle and fired two
12 rounds. Again, that shooting is captured on surveillance
13 video, and the defendant can be seen getting out of the
14 car and watching his codefendants fire those rounds.

15 Later that night at the Barclay Center, the
16 defendant was with several of his codefendants. He was
17 scheduled to perform, it was prior to a boxing match, and
18 at that event, Your Honor, the Government contends that
19 several of defendant's codefendants were armed going into
20 that event. The defendant's codefendants engaged with a
21 rival gang member and a rival rapper. They got into an
22 altercation, and one of the defendant's codefendants fired
23 a round. And it's the Government's intention that Mr.
24 Hernandez was well aware of that shooting in advance of
25 the - or well aware that his codefendants were possessing

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2 firearms in advance of that event.

3 And, indeed, after the shooting the defendant
4 took a video, either a live stream where he posted a video
5 of himself and his codefendants bragging about the
6 shooting and stating in sum and substance what happens,
7 that what happens when you engage with them, proud of that
8 shooting. It's the Government's contention that that
9 shooting is part and parcel of promoting the gang activity
10 that underlies count 1.

11 With respect to the final shooting --

12 THE COURT: And the gun was discharged inside
13 the Barclay Center?

14 MR. LONGYEAR: It was inside the Barclay
15 Center, Your Honor.

16 THE COURT: All right.

17 MR. LONGYEAR: With respect to the final act of
18 violence set forth in the letter, Your Honor, in July it's
19 the Government's contention that the defendant directed
20 some of his codefendants to shoot at a rival, someone who
21 disrespected other members of the gang, I should put it
22 that way. The shooting did take place where there was
23 gunfire in the evening of July 16 in a public housing
24 project in Brooklyn, and it's the Government's contention
25 that the defendant played a role in planning and directing

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that shooting.

So, Your Honor, with respect to the acts of violence and in particular the multiple acts of gun violence that are charged in this indictment, the penalties are severe, and it underscores the Government's contention that the defendant is quite violent.

Turning - there's a reference as well, Your Honor, to a search that was conducted at the defendant's house in September of this year. During that search law enforcement agents recovered the proceeds of the robbery that took place on April 3 in Manhattan, again, supporting the fact that Mr. Hernandez played a role in that robbery. More strikingly, Your Honor, is that the agents recovered an AR-15 pistol from his residence, and that's important, Your Honor, because, as the Court's aware from the Pretrial report, that defendant was a convicted felon, had entered into a plea agreement with the district attorney's office, and that gun obviously, as displayed in exhibit A, Your Honor, it's quite a dangerous weapon.

Your Honor, there are other events outside --

THE COURT: I'm just curious, is there a reason why he was not apprehended when the gun was recovered in September?

MR. LONGYEAR: Your Honor, the gun had been

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seized by law enforcement, and this investigation was ongoing.

THE COURT: All right, go ahead.

MR. LONGYEAR: More recently, Your Honor, the defendant on April 26 appeared in New York State Supreme Court for sentencing of his underlying conviction. Sorry, if I misspoke, October 26, Your Honor. At that hearing the defendant was sentenced to four years' probation. One of the conditions, it's the Government's understanding, was that he was not to associate with gang members. Two hours later the defendant is with two of his codefendants on the upper east side to meet with one of his music managers. His codefendants got into an altercation with the music manager's security, a fight broke out, a chair was thrown, and one of his codefendants was shot.

Your Honor, the Government's investigation --

THE COURT: The sentencing on October 26 was for what offense?

MR. LONGYEAR: That was for the sexual performance of a child --

THE COURT: I see.

MR. LONGYEAR: -- charge, Your Honor.

THE COURT: Okay. All right, go ahead. You were telling me about the altercation with the security --

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MR. LONGYEAR: Yes, Your Honor, but the defendant was not present for that altercation, but what was important was that he was with his two codefendants, two known gang members, hours after he was directed by a state court judge not to associate with gang members. Indeed, four or five days later --

THE COURT: He was not present for the altercation that resulted in the shooting?

MR. LONGYEAR: He was there, and it's the Government's understanding he left the restaurant, and then his codefendants came back and the altercation --

THE COURT: I see. Okay, go ahead.

MR. LONGYEAR: Your Honor, finally, the Government's investigation of this case included wiretap interceptions of some of his codefendants, and, again, after that April, sorry, October 26 order, the defendant can be, his voice was captured over that wiretap talking with certain of his codefendant who are well-known gang members, Your Honor. They are members of the Nine Trey Gangster Bloods which is a violent set underneath the United Bloods Nation which was formed in 1993 in Rikers Island.

So, Your Honor, I think those recent acts show the defendant's blatant disregard for court orders. As

1
2 the Court's aware, this is a presumption case. There are
3 multiple acts of violence, that the defendant was indicted
4 by a grand jury. He's facing a significant term of
5 incarceration, maximum of life with a mandatory minimum of
6 32 years, and has substantial means. So for all of those
7 reasons --

8 THE COURT: Can you just review for me how you
9 calculate the mandatory minimum of 32?

10 MR. LONGYEAR: Yes, Your Honor. It would be
11 seven years on the brandishing in connection with the
12 April 3, charged as an assault but was a gunpoint robbery,
13 state robbery. And then 25 years under 924(c)(1)(c) for
14 the discharge in furtherance of the RICO conspiracy.

15 THE COURT: Okay. Anything else?

16 MR. LONGYEAR: So for all those reasons, Your
17 Honor, the Government contends the defendant is a flight
18 risk as well as a danger to the community.

19 THE COURT: All right, thank you. Mr. Lazzaro,
20 go ahead.

21 MR. LAZZARO: Judge, I think the Government
22 with this indictment is really stretching it in a way,
23 Judge, that I can understand with respect to the
24 codefendants in this case, but I really don't understand
25 it with respect to Daniel Hernandez. Because in the

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2 indictment they say that this racketeering conspiracy went
3 from 2013 up until November of 2018. Let's be clear here,
4 Judge, Daniel Hernandez did not get involved with any of
5 these individuals, Judge, until September of 2017.

6 How did he get involved with some of these
7 individuals, Judge? He's at a concert. He's a rapper.
8 These people end up approaching him. He ends up hiring
9 them, some of these members, two of the members as
10 security for him. That doesn't make you guilty of
11 committing a criminal act, Judge. But that's how he
12 became involved with at least two of the alleged
13 coconspirators here, Judge. So when they allege that this
14 racketeering organization or this conspiracy went on for a
15 five-year period, the prosecutor is not being accurate
16 because his only involvement with some of these
17 individuals doesn't occur until a year ago, Judge.

18 And what does he do, Judge? He's a rapper. He
19 ends up hiring a couple of these people as a manager and
20 part of his security team. There's nothing wrong with
21 that, Judge, that doesn't mean you're guilty of a crime by
22 hiring these people.

23 So if I look at this conspiracy, they talk about
24 an incident that happened on April 3, and they submitted
25 videos to the Court or still shots. All I see on the

1
2 still shots are other people committing this crime, this
3 robbery charge, Judge. I don't see Daniel Hernandez or
4 Tekashi69 as he's known on any of those still images. And
5 they could argue, well, he was sitting in a car. That
6 doesn't mean you're guilty of a crime, even assuming their
7 position here, Judge. You have to have something more
8 than allegedly mere presence when you're not even in when
9 the act of the robbery occurs.

10 So they may look at it as an April 3 incident
11 that he's involved with it, but the New York City Police
12 Department never arrested him on April 3, never went to
13 his home, never questioned him. And so here it is now,
14 Judge, the federal government now is alleging that he's
15 involved with that incident even though when the state
16 police investigated that incident, he's never questioned,
17 charged, or anything.

18 We then speak about the April 21 incident,
19 Judge, with respect to allegedly two shootings --

20 THE COURT: I appreciate that mere presence and
21 even presence with knowledge is not an offense, is not a
22 crime, but the Government's proffer is that he accompanied
23 the other individuals, actually he directed the other
24 individuals to the alleged robbery that took place on
25 April 3, 2018. I mean is it your contention his presence

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2 there, if he was present, was accidental?

3 MR. LAZZARO: Whether he was present there,
4 Judge, or not, he had nothing to do with what happened
5 with any other individuals, if, in fact, it's true. But
6 they submitted to this Court he never directed them to rob
7 an individual or participated in that, Judge.

8 And with respect to these three incidents that
9 they're talking about, April 3, April 21, and July 16, and
10 I think the July 16 is a very serious charge, he wasn't
11 even in the State of New York at that time. He was in
12 Houston, Judge, Texas when the July 16 incident occurred.
13 Yet they're charging him with acting in concert as part of
14 this case where somebody attempted to murder somebody and
15 an innocent bystander was shot. He wasn't even in New
16 York, Judge. Yet they have now put it in front of this
17 Court that he participated in this when he was in Houston,
18 Texas and left Houston, Texas and went to California for a
19 video shoot.

20 I look at the April 21 incident, Judge.
21 Somebody was arrested on that incident. Again, Judge, he
22 wasn't arrested, wasn't spoken to by the police. He's at
23 a boxing match at Barclay Center and with 20,000 other
24 people at that boxing match. Yet all of a sudden New York
25 City Police Department says he didn't do anything wrong,

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yet he's now being --

THE COURT: Where did the New York City Police Department say he didn't do anything wrong?

MR. LAZZARO: He never was charged, Judge. A person was arrested for that --

THE COURT: Not being charged is not saying someone didn't do anything wrong.

MR. LAZZARO: Judge, if there was any involvement, and I've seen the video --

THE COURT: Is there any statement by a police department official --

MR. LAZZARO: No.

THE COURT: -- that he hasn't done anything wrong?

MR. LAZZARO: No. Judge, but --

THE COURT: But that statement's hyperbolic, isn't it?

MR. LAZZARO: (indiscernible) I've seen the video of him when the shooting allegedly occurred. He's nowhere involved in any of that. So based on those things, Judge.

I want to argue with respect to --

THE COURT: You say there's a video of the shooting that allegedly took place in April?

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2 MR. LAZZARO: Oh, yeah, inside the thing, and
3 he's not involved in it.

4 THE COURT: Well, do you want to continue so I
5 can review the video or - I presume you don't have the
6 video with you.

7 MR. LAZZARO: I don't have it with me, Judge,
8 but I would like to get onto --

9 THE COURT: Well, do you want a continuance so
10 that I can view the video?

11 MR. LAZZARO: No, Judge, I'd like to - I'm
12 going to propose something, Judge, in a few minutes. I
13 want to speak about the risk of flight, Judge. He had a
14 case in Manhattan, Judge, that he got sentenced on October
15 26. So when the prosecutor just argued a few minutes ago
16 he was a convicted felon, he wasn't a convicted felon, and
17 he wasn't sentenced until October 26, and he received
18 youthful offender treatment. So I don't know when the DA
19 says that during all of this he was a convicted felon and
20 engaging in this conduct, he had an open sentence where he
21 completed it substantially, everything the judge asked him
22 to in Manhattan, and he wasn't sentenced until October 26.

23 But, Judge, he was, he had concerts in Europe
24 where he came back to court knowing he had an open
25 sentence. He had concerts in California, throughout the

1
2 United States.

3 THE COURT: What was the maximum penalty he
4 faced on the matter for which he was sentenced on October
5 26?

6 MR. LAZZARO: He faced under the plea agreement
7 he could've gone away for up to 1 1/3 to 4 years in jail.

8 THE COURT: Okay, 1 1/3 to 4, 15 months to 4
9 years.

10 MR. LAZZARO: Correct.

11 THE COURT: Okay, go ahead.

12 MR. LAZZARO: But, Judge, every time he was
13 told to come back to court, he came back throughout that
14 two-year period, Judge. So I would argue, Judge, even
15 with all these huge sums of cash, every time he was told
16 to come back, he came back pursuant to a judge's order.
17 So I don't look at him as a risk of flight in any way,
18 Judge, because he had a case for well over a two-year
19 period, and he always came back.

20 And even with these large sums of cash, Judge,
21 that didn't stop him from coming back to court. He's in
22 an industry where if you become famous, which is what he's
23 become, you end up making a good sum of money, Judge. But
24 that doesn't mean you're a risk of flight. He's a United
25 States citizen, his mother is in this courtroom, Judge,

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2 his brother is in this courtroom, he entire family is in
3 this courtroom. And he is a United States citizen. So I
4 just think the argument that because he has large sums of
5 money with no warranty history whatsoever is a
6 disingenuous argument.

7 I understand the danger to the community
8 argument, Judge, but I would urge this Court, Judge, that
9 there's nothing where he ever brandished a gun and shot it
10 on these three incidents --

11 THE COURT: They recovered a gun from his
12 apartment, did they not?

13 MR. LAZZARO: Judge, he wasn't living there any
14 longer. What's interesting about that, Judge, is that he
15 was in Europe --

16 THE COURT: Was it his apartment?

17 MR. LAZZARO: Not at that time. He moved out.

18 THE COURT: Whose apartment was it?

19 MR. LAZZARO: That was a previous apartment
20 that they had rented. He had moved out of that --

21 THE COURT: I'm sorry, who's the they? When
22 you say that was a previous apartment that they had
23 rented, who's --

24 MR. LAZZARO: That the family had rented. And
25 so, but they moved out already, Judge. They were living

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2 in a different location at that time. He wasn't even here
3 when the federal government, the FBI agents --

4 THE COURT: When did they move out, when did
5 the family move out of the apartment?

6 MR. LAZZARO: They moved out in August of 2018,
7 Judge, and, in fact, Judge, I have the lease with me,
8 Judge, which - when they moved to Long Island in Lido
9 Beach where they had already moved out.

10 THE COURT: When did the lease on the apartment
11 terminate?

12 MR. LAZZARO: The old lease?

13 THE COURT: The lease on the apartment, when
14 did it terminate?

15 MR. LAZZARO: Where the Government has
16 recovered?

17 THE COURT: Yeah, what was the lease term?

18 MR. LAZZARO: According to my client, it was a
19 month-to-month tenancy in that Brooklyn address that he
20 moved out. However, they did sign a lease, Judge, which I
21 have a copy of the written lease, Judge. Your Honor, he
22 had moved out of that location.

23 Judge, one other thing you should note, Judge,
24 if he's such a danger to the community, and I didn't
25 really want to get into this argument here but I think it

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2 has to be raised at this point, he gets picked up by the
3 police, by the FBI on Saturday, Judge, not yesterday. He
4 gets picked out on Saturday. They come to his home and
5 they say we think there's credible threat against your
6 life right now, and we want you to come with us. They
7 take him to the FBI building in Manhattan, this is on
8 Saturday night, Judge. I went there, and they start
9 telling him there's a credible threat, that they think
10 somebody's going to hit you.

11 The threat that they believe is going to happen,
12 Judge, although the FBI agents are not telling me where
13 the threat is coming from. Two of his codefendants that
14 are on this indictment he had fired in the last week and a
15 half, Judge. He had thrown them out of his, of being part
16 of his management and as being part of his security. He
17 knew that there was a problem with these two individuals.
18 He fires them, he goes on a huge breakfast show on Friday
19 and announces to the world that he's fired everybody
20 surrounding him that he thinks is a bag apple. They're
21 thrown out of his business. He's caught them stealing
22 from him and everything else. So now I believe those
23 individuals that may be part of this are where the threat
24 is coming from.

25 So we go to the FBI office on Saturday, Judge.

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2 The FBI agents offer him this type of arrangement. They
3 say you can go home, Mr. Hernandez, but we want to watch
4 you 24 hours, meaning that we want to have security at
5 least until Tuesday or Wednesday, and then we'll reassess
6 the danger. Mr. Hernandez decides he doesn't want
7 security, and he actually signs a waiver with the agents
8 at that time where he says if anything happens to me, I'll
9 be responsible for it. If he's such a threat to the
10 community, Judge, on Saturday, they let him walk out of
11 that building.

12 I'm not so sure that this now demand of putting
13 him in detention is a kind of a misguided position of the
14 U.S. Attorney at this stage because he walks out of there
15 on Saturday, I don't know what changed between Saturday
16 and Sunday that now all of a sudden on Sunday they come
17 back to him and they chose to arrest him on Sunday. What
18 information changed between Saturday and Sunday, Judge?
19 You can't put somebody in jail because you chose not to
20 take the FBI's protection. Now, they may say that they're
21 doing it for his protection, we want him in jail. But if
22 he's such a danger to the community, why did they let him
23 walk out of the FBI building with me on Saturday night?

24 I think, Judge, what I'm proposing to this
25 Court, Judge, is this, is twofold, one that I think

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addresses his risk of flight --

THE COURT: Before we get to your proposal, just a couple of questions about - the apartment where the gun was found, was that on Locust Street, 18 Locust Street, Apartment 1L in Brooklyn?

MR. LAZZARO: No, Cambridge. It was on Kingston Avenue, Judge, right off of Atlantic Avenue.

THE COURT: And the lease that you were proffering before, is that the lease for Locust Street?

MR. LAZZARO: I have both leases, Judge.

(pause in proceeding)

MR. LAZZARO: Judge, here is the lease for the address he's been living at in Brooklyn.

THE COURT: So that's the Locust Street address? Just show it to Mr. Longyear first, okay, please.

(pause in proceeding)

MR. LAZZARO: I also have the lease, Judge, for where he moved his parents out, his mother and brother and he also stays at in Long Island. He had moved out of that property on Kingston Street --

THE COURT: All right, just one second, let me see the leases for a minute. Just give me a minute to look at them, then you can continue. Okay? Thank you.

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2 (pause in proceeding)

3 THE COURT: Let me just ask you a question or
4 two, Mr. Lazzaro. The two leases that you handed up, one
5 is for a premise in Lido Beach, and if I'm reading these
6 correctly, the second is for a premise on Ainslie Street
7 in Brooklyn. And according to the Pretrial Services
8 report, Mr. Hernandez told Pretrial that he's lived on
9 Locust Street his entire life and currently lives there
10 with his mother and sibling and that he will continue to
11 reside at that residence if he's released on bail. He
12 also indicated for the past five months he has been
13 staying at the Lido Beach address which is a residence he
14 currently rents.

15 MR. LAZZARO: What ended up happening --

16 THE COURT: What - according to this, he told
17 Pretrial he lived on Locust Street.

18 MR. LAZZARO: He does. What ended up happening
19 is that after October 26, when the judge in Manhattan,
20 Judge Menin, sent him to probation for a four-year period,
21 probation wanted him to move back to the Brooklyn address
22 full time.

23 THE COURT: Which Brooklyn address?

24 MR. LAZZARO: Locust Street. He ended up
25 moving back to Locust Street, Judge, just in the last

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month.

THE COURT: Why did the judge want him moving back to that particular address in Brooklyn?

MR. LAZZARO: I think at that time they could not supervise him in Long Island because it was outside of New York City.

THE COURT: No, but you've handed up a lease for Ainslie Street in Brooklyn which is also in New York City. I mean which is the address, is it Ainslie Street or Locust Street?

MR. LAZZARO: It's Locust Street, Judge.

THE COURT: Then what does - the lease for the Ainslie Street premises have any relevance?

MR. LAZZARO: They were thinking of moving into that location, and then they changed it to Locust Street after he was sentenced on October 26.

THE COURT: So he never lived on Ainslie Street?

MR. LAZZARO: He ended up leasing it, but I don't think he ever moved in. He never moved into it, Judge.

THE COURT: So the only Brooklyn residence he's had has been on Locust Street?

MR. LAZZARO: Yes. Well, not - originally it

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2 was Kingston, Judge. He moved out of Kingston, went to
3 Long Island. When he was sentenced in October, he had to
4 come back into the New York City area. He was going to
5 live on Ainslie Street but decided to change it to Locust,
6 if that makes sense.

7 THE COURT: The statement that he lived in
8 entire life on Locust Street and intends to live there if
9 released on bail and that he lives there with his mother
10 and his sibling, is that accurate or inaccurate?

11 (pause in proceeding)

12 MR. LAZZARO: Apparently, that's the family
13 apartment that he never gave up and he ended up moving
14 back. That's where he actually grew up in with his
15 parents and his brother. So he never gave that apartment
16 up and ended up moving back to it, Judge, when he was put
17 on probation in October. He never stopped paying the rent
18 on it.

19 THE COURT: And he never stopped living there?
20 Well, did he stop living there?

21 MR. LAZZARO: Right now, presently, he does.
22 He went --

23 THE COURT: No, did he ever stop living, did he
24 ever stop residing at Locust Street?

25 MR. LAZZARO: When he started to become famous,

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2 Judge, it really happened in October of last year, he
3 started staying at different apartments in Brooklyn
4 because he was --

5 THE COURT: Did he still get mail at Locust
6 Street?

7 MR. LAZZARO: All his mail still is addressed
8 to the Locust Street. Everything goes to Locust, his
9 credit cards, his passport, everything, Judge.

10 THE COURT: So is that still his primary
11 residence?

12 MR. LAZZARO: Yes.

13 THE COURT: All right, go ahead.

14 MR. LAZZARO: So with respect to, Judge, what I
15 was going to propose is this, Judge, to take away - I
16 don't believe he's a risk of flight because he always
17 comes back to court, and I don't think the sums of money
18 has made him a risk of flight because, as I told you, he
19 always came back.

20 What I'm proposing, Judge, is for him to deposit
21 \$750,000 into court. I'm also proposing that he surrender
22 his passport. I'm also proposing, Judge, that he goes
23 under house arrest or home confinement, which, Judge,
24 number one, it's a substantial bail, 750,000 we would
25 deposit into the court. We would agree that he's under

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home confinement, and we would also surrender his passport. He would not be on the streets of Brooklyn or anywhere at this stage. And that's what I'm proposing.

THE COURT: Okay, anything else you want to tell me?

MR. HERNANDEZ: No, Your Honor.

MR. LAZZARO: No, Your Honor.

THE COURT: Mr. Hernandez, it's far better if you talk to Mr. Lazzaro and let Mr. Lazzaro do the speaking or Ms. Florio, either one.

MR. HERNANDEZ: Okay.

THE COURT: But it's far better to let your attorney speak for you than for you to speak directly to the Court. All right, does the Government want to respond?

MR. LONGYEAR: Yes, Your Honor. Your Honor, first of all --

THE COURT: Where was the gun recovered?

MR. LONGYEAR: The gun was recovered from 31 Kingston, you know, and it was the first point I wanted to address was the defendant was in the process of moving out, there's no question. His family members were there at the house actually when the agents from NYPD, Homeland Security investigation, and ATF executed the search. But

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2 it's the Government's contention that that was --

3 THE COURT: Did it still appear that people
4 lived there when they executed the search at 31 Kingston?

5 MR. LONGYEAR: They were - the Government
6 concedes, Your Honor, that they were in the process of
7 moving out. There were boxes, there were moving boxes,
8 but the gun was recovered there, and significantly as
9 well, the proceeds from that April 3 robbery were also in
10 the house.

11 THE COURT: The proceeds consisting of the
12 backpack.

13 MR. LONGYEAR: The backpack and the contents of
14 the backpack, Your Honor.

15 THE COURT: What were the contents of the
16 backpack?

17 MR. LONGYEAR: Credit cards, identification
18 information of one of the rivals.

19 THE COURT: All right.

20 MR. LONGYEAR: Your Honor, with respect to
21 defense counsel's discounting some of these acts of
22 violence, I think the law is very clear here under
23 Rosemund that if the defendant has knowledge that acts of
24 violence will take place and that guns are involved, he's
25 on the hook for the 924(c), Your Honor, if he has advance

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knowledge that --

THE COURT: I'm sorry?

MR. LONGYEAR: If he has advance knowledge that his codefendants have guns and they planned to engage in certain acts of violence, here a robbery, a shooting, he is on the hook on the 924(c) liability if he aids and abets.

THE COURT: If there's a conspiracy.

MR. LONGYEAR: Right, if there's a conspiracy and as an aider and abettor.

THE COURT: Well, knowledge alone is not aiding and abetting.

MR. LONGYEAR: Right, but he's also, if he also --

THE COURT: You need some overt - you need some --

MR. LONGYEAR: Correct --

THE COURT: -- actus reus is what they used to call it.

MR. LONGYEAR: And it's the Government's contention that with respect to the April 3 robbery, he directed, he helped plan and direct the robbery. Indeed, as the letter I submitted to Your Honor earlier today sets forth this was planned. The victim was live streaming

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2 before he went into the building where he was eventually
3 robbed. The defendant and others left from Brooklyn,
4 drove to Midtown, waited outside that building for the
5 victims to leave, and then perpetrated the robbery at
6 gunpoint.

7 With respect to the July 16 act of violence, the
8 shooting, it's the Government's contention that the
9 defendant directed the shooting happen. Even if he
10 weren't in New York, Your Honor, there are other ways
11 including telephone, Facetime, Whatsapp, there are way to
12 communicate that the shooting take place which is the
13 Government's contention that's what happened here on July
14 16.

15 I've already addressed the April 21 shootings.
16 The evidence is clear, the surveillance video, the
17 defendant's presence and his boasting about the shooting
18 after it takes place at the Barclay Center. And, again,
19 it's the Government's contention that the evidence will
20 show that the defendant was well aware that his
21 codefendants possessed guns going into the Barclay Center.

22 Briefly, on the package, Your Honor, and I think
23 Your Honor's questions to defense counsel highlighted the
24 issue. The defendant's prior liability was one to four
25 years. He's facing a 32-year mandatory minimum sentence,

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2 Your Honor, a maximum of life imprisonment. He has a
3 significant reason to flee. And as he boasts on social
4 media and in interviews including this Friday interview,
5 he makes, he has appearances in Europe, in the Middle
6 East, he goes on tours. He makes several hundred thousand
7 dollars and more per appearance. So, Your Honor, he has
8 every incentive to use the substantial means that he has
9 to flee to avoid this sentence.

10 But, most importantly, Your Honor, he's a member
11 of a violent set of the Bloods that just as alleged in the
12 indictment, notwithstanding this five-year conspiracy
13 (indiscernible) that Mr. Lazzaro highlighted, in the last
14 seven months we've highlighted several shootings, public
15 shootings in the middle of the day. At 5 p.m. there's a
16 gunpoint robbery brandished in Midtown Manhattan. April
17 21, still light outside, there's a shooting on a busy
18 street in Brooklyn. Later that night a shooting at the
19 Barclay Center, inside the Barclay Center, and a shooting
20 on July 16 at a barbecue cookout in the summertime where
21 a person was hit. The defendant is violent, Your Honor.

22 And with respect to what Mr. Lazzaro was talking
23 about, the events of this past weekend, to be clear --

24 THE COURT: Did the FBI take him to their
25 office, to its office on Saturday evening or Saturday at

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2 some point?

3 MR. LONGYEAR: So, Your Honor, the Government
4 has been investigating the defendant for some time. Mr.
5 Lazzaro's correct that on Friday the defendant went on a
6 radio program and made certain derogatory statements about
7 other Bloods members and about some of his codefendants
8 whom he fired. As I mentioned earlier, the Government was
9 up on a wiretap on one of his codefendants and intercepted
10 phone calls between some of his codefendants saying that
11 they wanted to, quote, "violate him," to super violate
12 him, which the Government understands means that there
13 were authorizations to take violent acts against the
14 defendant including shooting him.

15 THE COURT: And those calls were intercepted
16 when?

17 MR. LONGYEAR: Those calls were intercepted
18 Saturday afternoon, Your Honor. With that information,
19 NYPD reached out to defendant, advised him that there was
20 a credible threat, and he was taken to HSI's office in
21 Manhattan and met with members of ATF, HSI, and NYPD to
22 discuss these threats. The agents offered him protection
23 in the form of staying at an apartment or hotel. The
24 defendant wanted to have people stay at multiple hotels
25 which was not an option. The defendant then ultimately

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declined the protection of law enforcement.

Your Honor, the reason we are here --

THE COURT: And he was allowed to go home on Saturday?

MR. LONGYEAR: He signed a declination, a waiver of liability, and was allowed to go home, but it wasn't as if law enforcement wasn't conducting round the clock surveillance of him. There were multiple unmarked cars, and any time the defendant's presence was known in the City, a marked car was placed at his location because of the violence surrounding this defendant.

On Sunday, the defendant was at his apartment. He went to a hotel in Manhattan. He was trailed by law enforcement officers. But the law enforcement got information that the defendant was planning to go to Foxwoods Casino, a venue that they could not control, and the determination was made that we should take the case down and start to arrest several of our targets including the defendant. That is why we're here today, Your Honor, and we are here --

THE COURT: Hold on one second. Why could not federal agents picked him up in Connecticut? Foxwoods is in Connecticut, is it not?

MR. LONGYEAR: It is, Your Honor. They picked

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him as he was leaving.

THE COURT: Right, but you said, you seemed to be - I think the words you used were if he went to Foxwood, it would be a place beyond their control. Why would it be beyond the control of federal agents?

MR. LONGYEAR: Law enforcement was aware of phone calls over a wiretap that certain high-ranking members of the Bloods that had authorized violence against the defendant. That was the only call we were aware of. We weren't aware of if there were other orders going out to other members of the Bloods set --

THE COURT: No, but those were the calls on Friday, right?

MR. LONGYEAR: Saturday. Saturday afternoon, late Saturday afternoon. And so, Your Honor, law enforcement at that time sees this as an active threat. There could be random shootings. Indeed, in Beverly Hills, about a week ago, the defendant was filming a music video at a home in Beverly Hills and two people --

THE COURT: What I'm trying to understand is what changed between Saturday and Sunday --

MR. LONGYEAR: He was going to - as opposed to being at his apartment and staying in place with law enforcement agents outside his door, he would be traveling

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2 and going to a public place, Your Honor. As I was
3 continuing, the Beverly Hills incident, he's filming a
4 music video, and this is well documented, it's in the
5 press, and two individuals shot ten rounds into the house
6 where he was filming. So law enforcement made a --

7 THE COURT: I'm trying to - that may show that
8 he's at risk, but how does that demonstrate dangerousness
9 on his part.

10 MR. LONGYEAR: I was attempting, Your Honor, to
11 address the situation that happened over the weekend and
12 why the events took place in the manner in which they took
13 place.

14 That being said, as alleged in the indictment,
15 this defendant participated in multiple acts of violence,
16 multiple shootings and a gunpoint robbery, Your Honor.
17 He's a member, a self-proclaimed member of the Nine Trey
18 Gangster Bloods. So, Your Honor, there are no set of
19 conditions that would ensure the public's safety with
20 respect to this defendant, and --

21 THE COURT: With respect to danger, danger to
22 the community, did anything change between Saturday and
23 Sunday?

24 MR. LONGYEAR: There were active threats
25 against the defendant, Your Honor.

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THE COURT: I mean, no, that doesn't bear - I don't think that bears on Mr. Hernandez's danger to the community. With respect to whatever danger Mr. Hernandez posed to the community, did anything change between Saturday and Sunday?

MR. LONGYEAR: The location of the defendant changed, Your Honor, but, frankly, I think the Government was in a position to charge the case rather rapidly, and, indeed, the way that this transpired today is we had to conduct probable arrests throughout last night.

THE COURT: So the answer to my question is?

MR. LONGYEAR: In all likelihood, we would have charged this case this week probably anyway --

THE COURT: You still haven't answered my question.

MR. LONGYEAR: What has changed?

THE COURT: Did anything with respect to the danger that Mr. Hernandez poses to the community, did anything change between Saturday and Sunday?

MR. LONGYEAR: There were multiple calls over the wire, Your Honor, discussing violence as to this defendant. So law enforcement --

THE COURT: Violence against Mr. Hernandez.

MR. LONGYEAR: Against Mr. Hernandez.

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THE COURT: Okay, with respect to the risk of danger that Mr. Hernandez posed to the community, did anything change between Saturday and Sunday?

MR. LONGYEAR: No, Your Honor, but law enforcement at least was able to contain that threat by maintaining a 24-hour presence with multiple unmarked and marked vehicles outside his house.

MR. LAZZARO: You know, Judge, I was there --

THE COURT: Okay, anything - just one - anything else you want to tell, Mr. Longyear? I'm going to give you a chance to speak again, but let me finish with the Government first. Anything else, Mr. Longyear?

MR. LONGYEAR: No, Your Honor.

THE COURT: Okay, go ahead.

MR. LAZZARO: Had Mr. Hernandez agreed, Judge, on Saturday night, and I was there for three hours with him, had he agreed to go into a hotel room or go into his home and take their protection, I would argue, Judge, that there would never have been an arrest yesterday. The DA's position or the prosecutor's position is because he did not take protection from the Government, that since the codefendants posed a threat to his life, he should now be remanded, not that he left on Saturday night and got arrested on Sunday because he posed a threat to other

1 people. The codefendants posed a threat to him, Judge.

2 Which is interesting here, and what the
3 Government just seems to gloss over is that he renounced
4 everybody on Friday of last week. He threw them out last
5 week out of his business. He fired everybody. He
6 renounced them publicly on a radio show. He renounced any
7 type of involvement with any of his codefendants, two of
8 the codefendants that Your Honor saw earlier.

9 I'm arguing, Judge, that he's not a danger to
10 the community, that the conditions that I have proposed,
11 Judge, are sufficient, Judge, where he would basically be
12 agreeing to what they proposed on Saturday night. They
13 were happy with him going home to his home and staying
14 there and not going out. I'm proposing exactly the same
15 thing today, Judge, except that I'm asking, I'm offering
16 to put up \$750,000 in cash in addition to agreeing to home
17 confinement, in addition to surrendering the passport --

18 THE COURT: Let me ask you a question. In the
19 Pretrial Services report, Mr. Hernandez reports 600,000
20 in, an estimated net worth of \$600,000, on page 2 of the
21 Pretrial Services report. Where does the additional 150
22 come from?

23 MR. LAZZARO: I'm going to tell you where,
24 Judge. I have three bank statements from three separate
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2 accounts. I spoke to his accountant last night because I
3 knew that this would come up today. And Daniel Hernandez
4 knows that he makes a lot of money. I don't think he
5 realizes how much money he does make or he's made in the
6 last year. In these three separate accounts are close to
7 \$1.7 million. I'd be willing, Judge, to go to \$1 million.
8 He's not running from this court. He's willing to stay
9 home. He would not be a danger to anybody. But the DA's
10 position that he's a danger to the community when they let
11 him walk out of the FBI agent, and nothing changed between
12 Saturday and Sunday other than --

13 THE COURT: Hold on a second. Before we leave
14 the subject of money, if he has 1.7 million in the bank,
15 if 1 million is posted as bail, doesn't that still leave
16 him \$700,000 --

17 MR. LAZZARO: Judge --

18 THE COURT: -- which would certainly finance a
19 trip?

20 MR. LAZZARO: Judge, I would put 1.5 million.
21 That's not an issue; he's not running.

22 THE COURT: All right, go ahead.

23 MR. LAZZARO: So the money is not an issue,
24 Judge, he's never run a day in his life. He had a pending
25 case in Manhattan, he came back each and every time a

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2 judge told him to. So we would be willing --

3 THE COURT: No, but I mean the penalties he
4 faces here are far more severe than the penalties he faced
5 on that case.

6 MR. LAZZARO: I understand that argument,
7 Judge, but the question is are there some set of bail
8 factors that can take him and protect the public. He'd be
9 under home confinement with electronic monitoring. He's
10 put up a substantial sum of money with this Court. He'd
11 surrender his passport. How the Government could argue
12 that those sets of facts which is, they would've agreed to
13 much less, Judge, on Saturday night. I could've agreed to
14 have him come home and they would've protected him. This
15 wouldn't have happened on Sunday. The fact that there
16 were threats to his life forced their hand, I understand
17 that. But he was such a danger to the community, they let
18 him walk out on Saturday night with me, Judge.

19 He's got his mother in this courtroom. He's got
20 his brother in this courtroom. There's no reason for him
21 to go anywhere but stay here, Judge. His whole life has
22 been in Brooklyn, New York. He's a lifelong resident.
23 Under those circumstances, Judge, I don't think the U.S.
24 Attorney can argue that he'd be a danger to the community
25 when he'd be home the whole time.

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2 And, Judge, he fired everybody. That's what the
3 prosecutor doesn't understand. He removed himself from
4 the bad element, and he went public with that, Judge. He
5 renounced everything with respect to two of the
6 codefendants. He went public with that. That's when the
7 threats came, Judge.

8 MR. LONGYEAR: Briefly, Your Honor, if I may.

9 THE COURT: Go ahead. Well, let me ask you
10 first why would not a seven figure bail package with home
11 detention with electronic monitoring be sufficient?

12 MR. LONGYEAR: Your Honor, with respect to risk
13 of flight, Your Honor, I mean electronic monitoring is not
14 foolproof.

15 THE COURT: Well, the Bail Reform Act does not
16 require foolproof security.

17 MR. LONGYEAR: No, Your Honor --

18 THE COURT: It requires a combination or,
19 condition or combination of conditions reasonably
20 calculated to secure the defendant's presence in court.
21 Nothing is foolproof.

22 MR. LONGYEAR: Detention is, would ensure his
23 presence in court, Your Honor, and --

24 THE COURT: No, but that's not what the Bail
25 Reform Act requires.

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2 MR. LONGYEAR: I understand that, Your Honor,
3 but, again, the defendant is facing a significant term of
4 incarceration and has incentive to leave, Your Honor.
5 And, again, with respect to the events of this weekend,
6 going home with an armed escort of law enforcement for a
7 short period of time until we take the case down, this was
8 not an indefinite guarantee that Mr. Hernandez could stay
9 home with NYPD, ATF, and HSI providing round the clock
10 security. But we had an obligation, because there was a
11 credit threat against him, to protect him.

12 Finally, Mr. Lazzaro makes a point that he has,
13 you know, disassociated himself with at least two of his
14 codefendants. At no time and including in that Friday
15 interview the defendant did not renounce his member in
16 Nine Trey. He promotes himself as a member of Nine Trey,
17 he's a member of the Bloods. It's set forth in the
18 letter, as indicted by a grand jury earlier today, he's
19 participated in multiple acts of violence, brazen acts of
20 violence throughout the streets of New York City, Your
21 Honor.

22 THE COURT: All right, well, the grand jury
23 makes a probable cause finding, not a finding of guilt or
24 innocence.

25 MR. LONGYEAR: Yes, Your Honor.

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THE COURT: And the probable cause finding is substantially below finding of guilt beyond a reasonable doubt.

MR. LONGYEAR: But I would submit, Your Honor, with the --

THE COURT: It's a one-sided presentation also.

MR. LONGYEAR: Yes, Your Honor, but with respect to the Government's evidence, just portions of which, still images of which were presented to Your Honor earlier today --

THE COURT: No, but one of the things -- I'm sorry to interrupt you, but one of the things that I find troubling here is that your dangerousness arguments are predicated on conduct that took place, the most recent act I guess was the July shooting. So that's four months ago. You got the gun recovery in September. It sounds like there is no additional evidence of danger to the community from Mr. Hernandez, not danger directed toward him, but danger from Mr. Hernandez, no evidence of additional activity suggesting Mr. Hernandez's dangerousness post-September.

There has not been a proffer that there was an ongoing investigation, that there was something else that the Government thought was imminent that justified keeping

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2 the investigation going. The conduct that gives rise to
3 the risk of dangerousness took place several months ago,
4 and the Government left Mr. Hernandez at large. And now
5 the Government is contending that he's too dangerous to be
6 left at large even under conditions of home confinement
7 and a very substantial cash bail. And that's what
8 troubles me. Maybe you want to address that.

9 MR. LONGYEAR: One moment, Your Honor.

10 THE COURT: Or put another way - to put the
11 question another way, as of September the Government did
12 not believe he was so dangerous to the community that he
13 needed to be apprehended. There are no additional facts
14 proffered post-September, but now two months later he's
15 too dangerous to leave on the streets according to the
16 Government. And that's what troubles me a little bit.
17 Maybe you can address that.

18 (pause in proceeding)

19 MR. LONGYEAR: Your Honor, as I stand here
20 today, I'm not aware of any other acts of violence. I
21 will say the Government's investigation is still ongoing,
22 and, indeed, with the April 3 robbery, that robbery was
23 never reported. There was no - Mr. Lazzaro said that
24 there was not NYPD - NYPD let him go or something to that
25 effect. There was no record of that robbery. We found it

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2 in our investigation. There was no police reports, there
3 were no 911 calls. That was based on our investigation.

4 So I guess, Your Honor, it's unclear whether or
5 not there were, as I stand here today, I'm not aware of
6 any other acts of violence. We were only up on a wiretap
7 for not even 20 days --

8 THE COURT: When did you learn of the April
9 robbery?

10 MR. LONGYEAR: I'm sorry, Your Honor?

11 THE COURT: When did you learn of the alleged
12 April robbery?

13 MR. LONGYEAR: We learned about it in about two
14 months ago, Your Honor.

15 THE COURT: All right, go ahead.

16 MR. LONGYEAR: So, Your Honor, it's the
17 Government's contention that the defendant is a member of
18 a violent set of the Bloods and that there are no set of
19 conditions here could ensure the safety of the community,
20 Your Honor. I mean he is, again, he's participated in
21 multiple acts, he's directed some of those acts is the
22 Government's contention, and that this is a presumption
23 case. He faces a significant term of incarceration. And
24 for those reasons, Your Honor, the Government thinks that
25 detention is appropriate here.

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2 MR. LAZZARO: Judge, he renounced anything to
3 do with any, at least two of his codefendants that were
4 working for him. He renounced them by firing them, he
5 renounced them publicly over a 50-minute interview, up to
6 an hour on the Breakfast Club, a station in New York City.
7 He renounced any type of involvement with these people.
8 There's been nothing, Judge, before this Court other than
9 the last allegedly what was recovered in his home when he
10 was in Europe.

11 However, Judge, again, for the Government to
12 make an argument that he's a danger to the community when
13 they let him walk out on Saturday night with me, there was
14 no discussion that he was a danger to the community. The
15 only thing that changed between Saturday and Sunday,
16 Judge, is that they felt that they couldn't follow him any
17 longer and thought that this threat would follow him if he
18 went to Connecticut to Foxwood. That's the only change
19 here, Judge. It wasn't that he's a threat to the
20 community. The threat was to him personally, Judge.

21 So what I'm proposing, Judge, is a substantial
22 bond where he would be off the streets. There'd be no
23 risk of flight. There's be an ankle bracelet on him 24
24 hours. And it's substantial, Judge, what I proposed. And
25 I would surrender his passport, Judge.

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THE COURT: What did you say the bank accounts totalled, 1.7 or 1.75?

MR. LAZZARO: I think 1.7. I have - hold on, Judge, I'll try and give you the most recent ones. That one bank account, Judge, under 69 Entertainment, that the ending balance on October 31 was 260,000. He's got another account, Judge, ending on October 31 in the name of 69 Touring where the ending balance was \$469,999. And then he's got another third account under Tekashi69 Publishing ending on October 31 where he's got 575,000. SO those are in his three accounts, Judge, presently. I'm going to try and give you the most recent statements, Your Honor.

THE COURT: There's 260, 470, and 575? Is there another bank account?

MR. LAZZARO: Yeah, there is, Judge.

THE COURT: All right.

MR. LAZZARO: There is 469,999 --

THE COURT: I think you gave me that one already.

MR. LAZZARO: Okay, so he's got 470,000, 576,000, and he's got 261,000, Judge.

THE COURT: All right.

MR. LAZZARO: I'll pass it up to Your Honor.

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THE COURT: No, that's all right.

MR. LAZZARO: He'd be willing to put the entire bank account, the proceeds into deposit with the court. He basically would have no ability to flee or anything like that.

(pause in the proceeding)

THE COURT: In some respects this is really, I think in some respects a difficult case. The two factors that are critical to bail determination, the risk of non-appearance and danger to the community, the Government has a presumption here, and the defendant has to - for the defendant to be granted bail, the defendant has to rebut that presumption.

With respect to risk of flight, or the risk of non-appearances perhaps more accurately, I think there are, there would be bail conditions that could minimize the risk of flight to an acceptable level. The substantial cash bail that Mr. Lazzaro has proposed along with home detention enforced by electronic monitoring I think would minimize the risk of non-appearance.

The risk of danger though is a more troubling factor, and the dangerousness to the community is something that's much less amenable to minimization through bail conditions. Here there are several

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2 aggravating factors that corroborate or reinforce the
3 presumption the Government enjoys. The fact that the
4 proceeds, the backpack and the identity documents that
5 were taken during the April 3 robbery were found in the
6 apartment that Mr. Hernandez was in the process of
7 vacating I think is compelling evidence corroborating his
8 involvement in that robbery.

9 I understand Mr. Lazzaro's proffer that he was
10 not physically in the lobby when the robbery took place.
11 The Government has proffered that he was outside in the
12 car videoing the lobby, videoing the robbery in the lobby.
13 But the fact that the proceeds were found in the apartment
14 or maybe part of the proceeds were found in the apartment
15 I think corroborates the Government's theory of his
16 involvement.

17 The recovery of the firearm, the AR-15 from the
18 apartment is also very troubling. It doesn't appear that
19 the apartment had been abandoned as of the date that the
20 Government recovered the firearm. It appears that the
21 defendant and his family were in the process of moving but
22 had not quit the premises.

23 (pause in proceeding)

24 THE COURT: The unfortunate reality is that
25 even if someone is subject to home detention with

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2 electronic monitoring, they are still capable of directing
3 acts of violence and participating in acts of violence.
4 Given the ubiquitousness of cell telephones, even
5 monitoring of a landline, monitoring of telephone calls
6 would not, adding that as a bail condition I don't think
7 could eliminate Mr. Hernandez's potential involvement in
8 acts of violence.

9 The Government does have a presumption here. I
10 think the risk of non-appearance could be minimized by
11 bail conditions, but I don't believe that the risk of
12 danger to the community could be minimized by bail
13 conditions. I don't think the presumption with respect to
14 dangerousness has been rebutted, although I take your
15 point, Mr. Lazzaro, and it is a close case, but in my
16 determination I don't think the risk of dangerousness has
17 been rebutted. And for that reason I'm going to direct
18 that Mr. Hernandez be detained pending trial.

19 If you want, we can ask the Marshals to produce
20 him in the cellblock tomorrow if you want to take an
21 appeal to Judge Engelmayer or I presume Judge Engelmayer's
22 available tomorrow.

23 MR. LONGYEAR: Unclear, Your Honor. I know he
24 has a schedule, so it would be Judge Engelmayer or Part 1.

25 THE COURT: Or the Part 1 judge. But if you

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want to do that, Mr. Lazzaro, that can be done.

MR. LAZZARO: I would like to do that, Judge.

THE COURT: All right, can the Marshals have him in the cellblock tomorrow so they can take an appeal to the district court? All right, I take it there is a conference before Judge Engelmayer in any event next Monday the 26th at 10:30.

MR. LONGYEAR: Correct, Your Honor.

THE COURT: All right. Anything else from the Government?

MR. LONGYEAR: No, Your Honor.

THE COURT: Mr. Lazzaro, anything else?

MR. LAZZARO: That's it, Your Honor.

THE COURT: Okay, thank you all. We're back on the record. Okay, go ahead.

MR. LAZZARO: Can you order medical treatment, Judge? He suffers from asthma.

THE COURT: Okay.

(Whereupon the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, United States of American v. Hernandez, docket number 18cr834, was prepared using digital electronic transcription equipment and is a true and accurate record of the proceedings.

Signature _____

Carole Ludwig

Date: November 22, 2018